

JUDGE GEAR LIGHTS OUT

Arraignments Are Made Under Last Found Indictments.

Arraignments of persons last indicted by the grand jury took place before Judge Gear yesterday morning.

Chas. F. Chillingworth, late Deputy High Sheriff, pleaded not guilty to the two indictments of extortion in small amounts. F. E. Thompson and G. A. Davis appeared for him.

With regard to the indictment against Chillingworth and Ahoo jointly, for extortion in the sum of \$1250, A. G. M. Robertson appeared for Ahoo and, after consultation between counsel for both defendants, the plea was reserved until Monday next.

Leon Renaut, represented by J. W. Catheart, pleaded not guilty to indictment for selling liquor without a license.

Kahlilallau, indicted for murder in the first degree, having no counsel was allowed to reserve his plea until Monday. It is probable that the court will have to assign counsel for this old man, whose criminal record has been given by the Advertiser.

Henry Viera, the lately discharged clerk of the Public Works Department, had his plea to extortion reserved by his counsel, F. E. Thompson.

DISPOSITION OF CASES.

There were no criminal cases ready for trial when defendants were called and asked if they desired trial this term. Judge Gear then ordered all criminal matters on the calendar prior to the latest indictments continued until the January term.

The trial of Emmett May previously set will come on before Judge Robinson, with Judge Gear's jury panel to draw from, at 10 o'clock this morning.

Hop Sing How's habeas corpus case

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EX-DEPUTY HIGH SHERIFF CHARLES F. CHILLINGWORTH, INDICTED FOR EXTORTION.

was continued until Monday next, when the Attorney General will have made return for the High Sheriff. The petitioner is contesting his sentence for keeping a lodging house without a license. Judge Gear held the law unconstitutional in another case, and now Judge Robinson will pass on the question independently. Should his decision sustain the law, there will be a chance to let the Supreme Court finally settle the question.

The Parker guardianship case is continued until January 4 at 10 a. m. The Rubinstein-Hackfeld injunction suit relative to the Little Joker tobacco agency is set for January 16 at 10 a. m.

JUDGE GEAR'S FLITTING.

Before hastening out to board the transport Sheridan for San Francisco, Judge Gear wrote and signed the following order:

"In the Circuit Court of the First Circuit, Territory of Hawaii. At Chambers.

"It is hereby ordered that all matters now pending before me at Chambers, excepting cases on trial and not concluded, be transferred to the Hon. W. J. Robinson, Third Judge of the Circuit Court for the Territory of Hawaii.

"GEO. D. GEAR."

"Dec. 7th, 1904."

JUDGE ROBINSON PRESIDES.

Judge Robinson takes charge of criminal matters remaining of the present term, under the following order signed by the three First Circuit Judges yesterday:

"It is hereby ordered that from and after Wednesday, December 7th, A. D. 1904, Hon. W. J. Robinson, Third Judge of the above-entitled Court, be and he is hereby designated and constituted Presiding Judge of the above-entitled Court for and during the remainder of the September, A. D. 1904, Term of this Court, in the place and stead of the Hon. George D. Gear, Second Judge of said Court."

DIFFERENT CASE ENTIRELY.

Judge Robinson made an order overruling the plea in bar of defendant in the covenant suit of Chung See vs. Kahanu Meek. It discusses the legal points at length. The plea in bar set up a judgment in the case of Kahanu Meek vs. Chung See and J. R. Mills, for an undivided half interest in the premises involved and \$156.56 damages and costs as an estoppel. That judgment was on the strength of a paramount title. Chung See is now suing for breach of covenant in a lease which was assigned to the present defendant, who was plaintiff in the lawsuit just mentioned, claiming damages for the curtailment of tenancy and the value of improvements.

The court finds that "a judgment against a defendant is not conclusive as to a settlor or counter claim which he might have pleaded to an action. In the absence of a statute a defendant having a cross-demand against the plaintiff may, at his option, either use it in the pending suit as a settlor, or reserve it to be used as the basis of an independent action. This failure, therefore, to plead it does not preclude him from bringing a subsequent action for it." The order concludes:

"The case at bar presents an entirely different cause of action from that presented in the former case, the judgment in which is relied upon as a bar to the present action, and in my opinion such judgment operates in the case at bar, as an estoppel only as to those matters in issue or points of controversy which were actually litigated or decided in the former action and upon which the judgment therein was based.

"It is ordered that the defendant's plea in bar be and the same is hereby overruled."

THE HOLT ESTATE.

Judge Gear signed an order appointing Carlos Long in place of Henry Smith, resigned, as administrator of the non cum testamentary estate of R. W. Holt, who died on or about some day in November, 1862, under \$20,000 bond. The estate is stated in the order to be of the value of \$110,000. George A. Davis represented the petitioner.

HABEAS CORPUS DENIED.

In the case of Fukunaga, the Japanese fisherman imprisoned in default of paying a fine of \$50 and costs for fishing within the bounds of the Hono-

lulu fishery, Judge De Bolt yesterday rendered an oral decision holding that the judgment of the lower court was valid. He therefore ordered the writ of habeas corpus dismissed and the petitioner, Fukunaga, remanded to the custody of the High Sheriff.

Geo. A. Davis, attorney for petitioner, gave notice of an appeal to the Supreme Court. Fukunaga was released under his former bond of \$60, S. M. Ballou for the prosecution making no objection.

The ground of the petition for the writ was that the United States Congress, in the Organic Act, had repealed the proprietary fishery laws of Hawaii. At the trial before District Magistrate Hookano of Ewa, proof was given that the O. R. & L. Co., owning the Honolulu fishery, had taken the steps required by the Act of Congress in question to establish its vested right in the fishery, the Act excepting from its operation such sea fisheries as might be held under vested rights.

THE DISPUTED CONTRACT.

C. S. Holloway, Superintendent of Public Works, and J. H. Fisher, Auditor, answer the complaint of Lord & Belser, contractors, against John Walker, contractor, and themselves. They deny that Walker's bid for dredging the Alakea street slip was not accompanied by a certified check of 3 per cent of his proposal and that the paper filed by Walker was not a certified check within the meaning and intent of the advertisement for bids. Also, they deny "that the contract is null and void and contrary to law and the awarding thereof to the said John Walker as set forth in said contract was illegal and unfair and will result in irreparable injury to the complainants herein as well as to all other taxpayers of the Territory, and will deprive said complainants of their right of fair, equal and impartial competition under the law of bidding on public contracts."

COURT NOTES.

Caroline Teves widow, petitions that she be appointed administrator of the estate of her late husband, Eduardo Jose Teves, which is valued at \$1829.50 and consists of certain leaseholds with improvements, excepting an item of \$299.50 as the value of 25 shares in the Phoenix Savings, Building & Loan Association.

Charles Clark, attorney for plaintiff, has filed a discontinuance of the assumpsit suit of Allen & Robinson vs. Frederick W. Knight, defendant, and Carl Du Roi and William Wolters, garnishees.

Albert Barnes vs. C. R. Collins, bill for dissolution of partnership and accounting, was argued before the Supreme Court yesterday morning. Whitney and Clemons for plaintiff; Dunne for defendant.

Samuel Parker by his attorneys, Magoon and Lightfoot, has made answer denying every allegation of Sidney M. Ballou's complaint, in which \$50,000 is claimed as damages for libel.

The plaintiff having rested in the ejectment suit with \$3000 damages claimed, of Ching Man Sing vs. Mary A. Richards et al., M. Withington for defendants moved for a nonsuit. Judge De Bolt denied the motion, exceptions were noted and evidence for the defendants began to be put on.

William R. Sims was appointed by Judge Gear master on accounts of the estate of Tokujiro Niya.

A TIMELY SUGGESTION.—This is the season of the year when the prudent and careful housewife replenishes her supply of Chamberlain's Cough Remedy. It is certain to be needed before the winter is over, and results are much more prompt and satisfactory when it is kept at hand and given as soon as the cold is contracted and before it has become settled in the system. In almost every instance a severe cold may be warded off by taking this remedy freely as soon as the first indication of the cold appears. There is no danger in giving it to children for it contains no harmful substance. It is pleasant to take—both adults and children like it. Buy it and you will get the best. It always cures. Sold by all Dealers. Benson, Smith & Co., Ltd., Agents for Hawaii.

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SECOND FLOOR

FORT AND MERCHANT STREETS,

FARMERS AND A
DISTANT MARKET

Has anybody ever heard of an American small farmer, even those intrepid ones who braved the danger of the prairie and settled the great west, starting a farm two thousand miles from a market to which freight rates were almost prohibitive and transportation facilities limited?—Star.

Editor Advertiser: Does not the reading of articles like this make one angry, and discredit the paper that publishes them? Yes, every one that has read of the colonization of America, Australia, New Zealand and other British colonies too numerous to mention have heard and know of more wonderful instances by far. Take the case of New Zealand. The early colonists started in and built up their farms when no market was in sight, in fact, was twelve thousand miles away. And as for transportation! Well, there wasn't any transportation, but the sturdy settler had faith in the future. Well, what do we see now? Just look up New Zealand's trade returns. Their butter on the London market "the other side of the world" rivals the best. Her cheese, fresh mutton and beef will also be found there. The Philippines also gets its fresh meat supply from New Zealand. But I shall be told this is not small farming. All I can say is that when people emigrated to New Zealand they had nothing. Well, yes, they had a friendly government! Anyway they are a rich community now and one of the gems of the Empire's crown.

This talk of markets and transportation! Why, this country is a picnic for small farmers. Just look at that vast area, the United States, for a free market, and then say the small farmer cannot raise anything profitable enough to send here. What rot!

What is the object of publishing such stuff, anyway? Does the "Star" want to keep future wealth producers and subscribers off the land? Just give the American farmer a chance. There is need of a few more here, and he will show you in a few years what he can do.

Sincerely, J. B. H.

SPORTS.

(Continued from page 5.)

Those who played on the High School team were: Forwards, Ellen Dwight and Leinaala Smith; center, Eta Cummings and Agnes Cassidy; guards, Josephine Stone and Maud O'Sullivan.

Kams were: Forwards, Daisy Sheldon, Louise Bartela; centers, Miriam Mundon, Amoe Ah Kue; guards, Kaonohi Lui and Esther Cockett.

Subs—Lily Kai and Helen Kawahana. The Highs played a fast snappy game and their team work was exceedingly good.

On Wednesday the Highs defeated the Punahou by the decisive score of 16 to 4. The Highs proved entirely too strong for the Puns and fairly walked away with them. There was a large crowd of spectators present to witness the game.

Punahou lined up as follows: Centers, Rena Bertelman, Miss Hoffman; forwards, Misses Heen and Muller; guards, Agnes Smith and May Frazier.

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